

Remarks

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. This amendment addresses items brought up by the Examiner in the final office action. Claims 1-6 and 8-21 are pending, with claim 1 being the sole independent claim. Claim 1 is sought to be amended. Claims 3, 6, 8, 12-17 and 21 are withdrawn pending the allowance of generic claim 1 from which they directly or indirectly depend. Claims 7 and 22-41 are canceled without disclaimer of or prejudice to the subject matter thereof. In view of the amendments and following remarks, favorable consideration and allowance of the application are respectfully requested.

Rejections Under Kusleika in View of Chouinard

Claims 1, 2, 4, 5, and 18-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,325,815 to Kusleika et al. (“Kusleika”) in view of U.S. Pat. Appl. Pub. No. 2002/0007210 to Chouinard et al. (“Chouinard”). The Examiner states that Kusleika teaches a method of manufacturing a distal protection element that discloses each feature of independent claim 1 except for “reducing the thickness of the filaments forming the braided enclosure along at least a portion of the first end region.” Office Action p. 2. The Examiner states that Chouinard teaches a vascular device comprised of braided filaments that are reduced in diameter along at least a portion of a first end of the device noting it would be obvious to have used “the reducing teaching [of] Chouinard in the method of Kusleika in order to provide a smaller diameter section of the filament in a tortuous portion of the stent or in a region requiring greater flexibility (Chouinard, paragraph [0084])¹.” Office Action pp. 2-3.

The reducing step in method claim 1 recites “reducing a thickness of the filaments forming the braided enclosure along at least a portion of the first end region” which clearly denotes that the filaments formed into the braided enclosure, and particularly those in the first end region, are being subjected to the reducing step, which is also the only reasonable interpretation of claim 1 that may be supported in view of the specification. *See*, Specification ¶ [0043] and FIG. 3. However in order to clarify claim 1, the step of reducing a thickness of the filaments has

been recited to occur after the step in which the filaments have been formed into the braided enclosure. Support for this amendment may be found, inter alia, in paragraph [0043] of the specification with reference to FIG. 3. Applicants assert that Chouinard discloses using pre-tapered filaments to form a braided stent and does not teach or suggest a method of forming a braided stent and then reducing a thickness of the filaments that form the braided stent. Since the combination of Kusleika and Chouinard do not teach or suggest reducing a thickness of the filaments that comprise the braided enclosure after formation of the braided enclosure, the method of claim 1 is not taught or suggested thereby. Therefore, claim 1 is patentable over Kusleika and Chouinard.

Claims 2, 4, 5, and 18-20 that depend from and add further features to independent claim 1 are patentable for at least the reasons argued above with respect to the independent claim. While it is not necessary to address the Examiner's rejection of the dependent claims at this time, Applicants reserve the right to support their patentability, when necessary.

Rejections Under Kusleika in View of Chouinard and Heilman

Claims 9-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kusleika in view of Chouinard as applied to independent claim 1 above and further in view of U.S. Patent No. 4,080,706 to Heilman et al. ("Heilman"). The Examiner relies on Heilman as teaching a tapered reduction of an element of a vascular device that is formed by electro-etching the portion of the element. *See* Office Action p. 3.

Claims 9-11 directly or indirectly depend from and add further features to independent claim 1, which is argued above as being patentable over Kusleika in view of Chouinard. Heilman does not make-up for the deficiencies of the combination of Kusleika and Chouinard. Particularly, Heilman teaches electro-etching/polishing a distal region of a core wire to remove metal therefrom, and does not teach or suggest a step of reducing a thickness of filaments that form a braided element, as recited in the method of claim 1. *See*, Heilman, col. 5, line 48-col. 6, line 19. As such the combination of Kusleika, Chouinard and/or Heilman do not render obvious claim 1. Therefore, dependent claims 9-11 are patentable over the combination of Kusleika,

¹ Chouinard ¶ [0084] to which the Examiner refers in fact recites that the "smaller diameter section of the filament may be positioned such that [it] coincides with a tortuous portion of a [body] lumen requiring greater flexibility than other regions of the stent." It is unclear how this feature would benefit a distal protection device according to claim

Chouinard and Heilman for at least the reasons argued with respect to claim 1. While it is not necessary to further address the Examiner's rejection of the dependent claims at this time, Applicants reserve the right to support their patentability, when necessary.

Examiner Interview June 10, 2009

Applicants' representative telephoned the Examiner on June 10, 2009 to discuss the meaning of method claim 1 and a clarifying amendment. Applicants appreciate the Examiner's courtesy extended during the interview. The allowability of the claims over the currently cited references was not confirmed nor was entry of the amendment assured, as the Examiner expressed a need for an updated search. With regard to the need for an updated search, Applicants are uncertain why a search of the steps of method claim 1 in the order the steps are proffered would not already have been made. It seems reasonable to have expected that such a search should already have been conducted by the Examiner prior to issuance of the final Office Action. Applicants assert that denying entry of Applicants' clarifying amendment of claim 1 under the guise of needing to perform another search is specious and destined only to increase the cost of pursuing this case for the Applicants.

Conclusion

For the foregoing reasons, Applicants believe all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. §1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (978) 739-3075 Eastern Time.

Respectfully submitted,

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1. Chouinard ¶¶ [0083] - [0084].